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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NO. CIV. S-04-1325 LKK/DAD

O R D E R

CITY OF STOCKTON, et al.,

## Defendants.

Pending before the co

I.

## BACKGROUND

The court has set forth the relevant facts elsewhere, and no purpose is served by repeating those facts here. Suffice it to say that on July 9, 2004, plaintiffs Dennis Keller and

<sup>1</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. Local Rule 78-230(h).

1 Crystal Keller filed suit against the City of Stockton ("City"),  
2 the County of San Joaquin, Child Protective Services worker Jose  
3 Romero, and officers Katherine Henderson and Ken Praegitzer,  
4 alleging unreasonable seizure of Crystal from the custody of her  
5 father. The suit was predicated on 42 U.S.C. § 1983, and  
6 alleged violations of the Fourth and Fourteenth Amendments of  
7 the United States Constitution.<sup>2</sup>

After a four-day trial, which ended on March 31, 2006, the jury found that the City, Henderson, and Praegitzer violated the Kellers' civil rights and awarded compensatory damages to Dennis Keller in the amount of \$100,000 and to Crystal Keller in the amount of \$500,000. The jury awarded punitive damages against Henderson and Praegitzer in the amount of \$1,000,000 each, for a total of \$2,600,000.

II.

## **STANDARDS**

17 The Supreme Court has articulated the standard for a  
18 finding of "prevailing party" as whether the party has  
19 "succeed[ed] on any significant issue in litigation which  
20 achieves some of the benefit the parties sought in bringing  
21 suit." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)(citing  
22 Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. 1978)). The Ninth  
23 Circuit, in discussing whether a party has achieved "prevailing"  
24 status, has noted that a party can achieve that status by

<sup>2</sup> During discovery, plaintiffs dismissed the County of San Joaquin and Jose Romero.

1 establishing a "clear, causal relationship between the  
2 litigation brought and the practical outcome realized."  
3 Rutherford v. Pitchess, 713 F.2d 1416, 1419 (9th Cir. 1983).

4 In an action brought pursuant to 42 U.S.C. § 1983, "the  
5 court, in its discretion, may allow the prevailing party, other  
6 than the United States, a reasonable attorney's fee as part of  
7 the costs . . . ." 42 U.S.C. § 1988(b). Consequently, the  
8 court may grant reasonable attorney's fees pursuant to 42 U.S.C.  
9 § 1988(b).

10 The federal courts have adopted the "lodestar" method for  
11 calculating attorney's fees. Hensley, 461 U.S. at 424. To  
12 determine the appropriate fee amount, the court multiplies the  
13 number of hours reasonably expended in the litigation by a  
14 reasonable hourly rate. Id. The court may then, at its  
15 discretion, adjust the lodestar amount after considering other  
16 factors that bear on the reasonableness of the fee.<sup>3</sup> Dang v.  
17 Cross, 422 F.3d 800, 812 (9th Cir. 2005).

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20       <sup>3</sup> The twelve Kerr factors, incorporated by Local Rule 54-  
293(c), bearing on reasonableness are:

21       (1) the time and labor required, (2) the novelty and  
22 difficulty of the questions involved, (3) the skill  
23 requisite to perform the legal service properly, (4) the  
24 preclusion of other employment by the attorney due to  
25 acceptance of the case, (5) the customary fee, (6)  
26 whether the fee is fixed or contingent, (7) time  
limitations imposed by the client or the circumstances,  
the amount involved and the results obtained, (9)  
the experience, reputation, and ability of the  
attorneys, (10) the "undesirability" of the case, (11)  
the nature and length of the professional relationship  
with the client, and (12) awards in similar cases.

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III.

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## **ANALYSIS**

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## A. PREVAILING PARTY

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5 U.S.C. § 1983 because the jury found that defendants violated  
6 their rights and that the conduct was attributable to the City  
7 of Stockton and to Officers Henderson and Praegitzer.

8 Defendants contest this assertion because pending before the  
9 court is a Motion for Judgment as a Matter of Law, New Trial,  
10 and/or Remittitur. Defendants argue that if the court should  
11 determine that their position has merit, "then the predicate for  
12 Plaintiffs' entitlement to fees - a judgment establishing  
13 Plaintiffs' status as prevailing party - will have vanished."  
14 Defs.' Opp'n at 1. As set forth in an order issued concurrently  
15 with this one, however, the court has denied defendants' motion  
16 for judgment as a matter of law and new trial, and thus, the  
17 court concludes that there is a causal relationship between the  
18 litigation brought and the outcome achieved, and that plaintiffs  
19 are entitled to attorney's fees.<sup>4</sup>

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**B. REASONABLE HOURLY RATE**

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21 The appropriate hourly fee should be based on the rates  
22 charged by counsel with similar experience, reputation, and  
23 skill for similar cases in the legal community. See Chalmers v.  
24 Los Angeles, 796 F.2d 1205, 1211 (9th Cir. 1985). Plaintiffs'

<sup>4</sup> Although the court has reduced the punitive damages awarded to Dennis Keller, there is no doubt that plaintiffs prevailed in the suit.

1 counsel seeks \$350.00 per hour for work performed on this  
2 case. Beauvais Dec. at 1. Defendants contend that plaintiffs'  
3 counsel should receive no more than \$300.00 per hour. Defs.'  
4 Opp'n at 2. Mr. Beauvais, plaintiffs' counsel, has over twenty-  
5 eight years of experience practicing law, having been the  
6 counsel of record in numerous § 1983 cases, including five civil  
7 rights cases concerning allegedly unlawful removals of children  
8 from their parents. Beauvais Dec. at 2. Plaintiffs support the  
9 hourly fee request by providing declarations from three  
10 attorneys, all of whom are admitted to practice before the  
11 Eastern District. The hourly rates that those attorneys suggest  
12 vary. See Katz Dec. at 2 (proposing a prevailing rate of more  
13 than \$250); Wells Dec. at 2 (suggesting a prevailing rate of at  
14 least \$400); Miller Dec. at 4 (proposing a prevailing rate  
15 between \$300 and \$325). Andrea Miller's declaration is  
16 particularly helpful in that she has served as an expert witness  
17 on attorney fee issues in several cases in and around  
18 Sacramento. Miller Dec. at 4. Similar to Beauvais, Miller has  
19 practiced law for approximately twenty-seven years, and has  
20 represented plaintiffs in child removal cases. Based on her  
21 experience and opinion, she states that plaintiffs' counsel  
22 should be awarded "between \$300 and \$325 per hour." Miller Dec.  
23 at 4. Defendants argue that the prevailing rate should be no  
24 higher than \$300, by citing to plaintiffs' declarations and  
25 arguing that some attorneys received fees of \$300 or less.  
26 Defs.' Opp'n Mem. at 2. Defendants' argument is not dispositive

1 of the issue, nor do they submit independent evidence to  
2 establish the appropriate prevailing rate.

3 After considering Mr. Beauvais' legal experience, the  
4 declarations filed with the court, the manner in which the case  
5 was tried, and defendants' opposition, the court concludes that  
6 the rate of \$325 adequately reflects the prevailing hourly rate  
7 in the Sacramento area for similar work performed by attorneys  
8 of comparable skill, experience, and reputation. The court  
9 calculates the lodestar figure based on this hourly rate.

10 **C. REASONABLE HOURS BILLED**

11 Plaintiffs seek to recover attorneys' fees for a total of  
12 239.6 hours expended in this litigation, including for the time  
13 spent on this motion.<sup>5</sup> Pls.' Mot. at 1. In arriving at the  
14 lodestar figure, the district court should exclude hours that  
15 are "excessive, redundant, or otherwise unnecessary . . ."  
16 Hensley, 461 U.S. at 434. Further, an attorney may request fees  
17 associated with his motion for an award of attorneys' fees.  
18 Harris v. Marhoeffer, 24 F.3d 16, 19 (9th Cir. 1994).

19 Plaintiffs' counsel argues that although this case did not  
20 present any novel issues, having to litigate issues arising from  
21 the contentious custody battle that provided context for the

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22       <sup>5</sup> Plaintiffs originally sought to recover 206.3 hours in  
23 fees, but on June 5, 2006, plaintiffs submitted a supplemental  
24 declaration seeking to recover fees for 33.3 hours spent on  
25 researching and writing the opposition brief to defendants' motions  
26 for a new trial, judgment as a matter of law, or remittitur. The  
court has examined the declaration and the time records and  
determines that the hours sought for opposing these motions are  
reasonable.

1 case made litigation much more difficult. Pls.' Mot. at 5.  
2 Counsel has filed a lengthy and detailed billing record setting  
3 forth the time spent over the last two years on this litigation.  
4 See Beauvais Dec., Ex. A. Importantly, defendants do not oppose  
5 plaintiffs' calculation of the time and labor expended in the  
6 litigation.

7 The court has examined Mr. Beauvais' papers, declarations,  
8 and accompanying records and concludes that 239.6 hours is  
9 reasonable under the circumstances.

10 **D. BILL OF COSTS**

11 Plaintiffs request \$627.90 for the costs of transcripts  
12 related to this suit and \$4,607.21 for other costs. Plaintiffs  
13 have tendered to the court invoices evidencing these costs. The  
14 court, however, has examined the bill of costs and has adjusted  
15 the amount pursuant to Local Rule 54-292 and 28 U.S.C. § 1920.

16 First, plaintiffs have tacked on \$693.70 to the bill of  
17 costs for amounts related to travel to Pensacola for the Morie  
18 deposition, including dining expenses. This amount should be  
19 calculated with the attorneys' fees, not the bill of costs, and  
20 the court will add this amount to the attorney's fees. See  
21 Davis v. Mason County, 927 F.2d 1473, 1488 (9th Cir. 1991).

22 Second, according to the Local Rules and 28 U.S.C. § 1920,  
23 appearance fees, non-appearance fees, per diem costs for the  
24 court reporters, and special handling charges may not be taxed.

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1 The court will therefore subtract \$ 533.50 from the requested  
2 bill of costs amount.

3 With the adjustments noted above, the court shall award  
4 plaintiffs \$ 4,007.91 in costs.

5 **IV.**

6 **CONCLUSION**

7 Accordingly, plaintiffs's counsel is AWARDED \$82,571.61 in  
8 attorney's fees and costs.<sup>6</sup>

9 IT IS SO ORDERED.

10 DATED: July 18, 2006.

  
11 LAWRENCE K. KARLTON  
12 SENIOR JUDGE  
13 UNITED STATES DISTRICT COURT

22         <sup>6</sup> The amount is based on those fees and costs sufficiently  
23 documented by plaintiffs' counsel as follows:

	Hours	Rate	Total
David J. Beauvais	239.6	\$325/hr	\$77,870.00
Travel Costs			\$ 693.70
Costs			\$ 4,007.91
<b>Total</b>			<b>\$82,571.61</b>